

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**FRANK ALLEN & ROSEMARY ANN
ALLEN**

Plaintiffs,

v.

**1:04-CV-1418
(GLS/DRH)**

**CH ENERGY GROUP, INC. formerly
known as CENTRAL HUDSON GAS &
ELECTRIC COMPANY**

Defendant.

APPEARANCES:

OF COUNSEL:

FOR THE PLAINTIFFS:

DANIEL G. HEPPNER, ESQ.
Rusk, Wadlin Law Firm
255 Fair Street
P.O. Box 3356
Kingston, New York

FOR THE DEFENDANT:

ROBERT T. BARNARD, ESQ.
Thompson, Hine Law Firm
One Chase Manhattan Plaza
58th Floor
New York, New York 10005

Gary L. Sharpe

United States District Judge

ORDER¹

This matter comes before the court following a hearing today addressing several motions brought by the respective parties in the instant action. See *Dkt. Nos. 5, 7, 9.* In that hearing, the court issued an oral decision dismissing certain claims in Allen's amended complaint as preempted by § 301 of the Labor Management Relations Act (LMRA) and remanding the remaining state law claims in each count of the amended complaint to the Ulster County Supreme Court. See *06/23/05 Minute Entry, Dkt. No. 12.* In summary, the court **ORDERED** that:

- 1) Allen's claim asserting "*neglige[nce] in [defendant's] conduct in investigating the false allegations*" in the First count is **DISMISSED** as **PREEMPTED** by § 301 of the Labor Management Relations Act (LMRA), see *Amend. Compl. ¶ 13, Dkt. No. 4;*
- 2) Allen's claim of intentional infliction of emotional distress in the Third Count relating only to "*the fear of losing his economic livelihood*" is

¹It should be noted that this court only dismissed those claims in each count of the amended complaint that were found to be preempted by § 301 of the LMRA. The court did not address either the merits of the remaining state law claims in each count of the amended complaint or the application of any defense to those claims. See *06/23/05 Minute Entry, Dkt. No. 12.*

DISMISSED as **PREEMPTED** § 301 of the LMRA, see *id.* ¶ 22;

3) Allen's loss of consortium claim in Fourth count inasmuch as it relates to the above-mentioned claims is likewise **DISMISSED** as **PREEMPTED** § 301 of the LMRA;

4) the Clerk of the court **REMAND** this case with the remaining state law claims to the Ulster County Supreme Court and serve a copy of this Order upon the parties and the state court.

Dated: June 28, 2005
Albany, NY

Gary L. Sharpe
Gary L. Sharpe
U.S. District Judge